



Missouri Department of Natural Resources
Water Pollution Control Program

MISSOURI CLEAN WATER COMMISSION MEETING

August 7, 2002

Governor Office Building, Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Joseph P. Bachant, Department of Conservation, Jefferson City, Missouri
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Gerry Boehm, Greenway Network, St. Charles, Missouri
Robert Brundage, MO-AG, Princeton, Missouri
Bill Bryan, Assistant Attorney General, Jefferson City, Missouri
John Carter, The Doe Run Company, Viburnum, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Mohsen Dkhili, Department of Natural Resources, Jefferson City, Missouri
Dave Drennan, MO Dairy Association, Chesterfield, Missouri
Tim Duggan, Assistant Attorney General, Jefferson City, Missouri
Tom Edwards, Department of Natural Resources, Jefferson City, Missouri
Eric Ervin, Holcim, Inc., Ste. Genevieve, Missouri
Mike Farley, Consolidate North County Levee District, Florissant, Missouri
Charles Fillinger, GST Steel, Kansas City, Missouri
John Ford, Department of Natural Resources, Jefferson City, Missouri
John Grimm, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Bart Hager, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri
John Hoagland, Missouri Rural Water Association, Schell City, Missouri
Leslie Holloway, MO Farm Bureau, Jefferson City, Missouri
John Howland, Midwest Environmental, Jefferson City, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Duane Kelly, Independence, Missouri
Malinda King, Department of Natural Resources, Jefferson City, Missouri
Keith Klein, Holcim, Inc., Oklahoma City, Oklahoma
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri

Mark Lenox, Fort Leonard Wood, Fort Leonard Wood, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Melissa Manda, Department of Natural Resources, Jefferson City, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Mike Mullin, Holcim, Inc., Chesterfield, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Jim Penfold, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Pozzo, AMEREN, St. Louis, Missouri
Charles Raab, City of Kansas City, Kansas City, Missouri
Kristine Ricketts, Department of Natural Resources, Jefferson City, Missouri
Jim Russell, MO-Ag, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
J. D. Schuenemeyer, Department of Natural Resources, Jefferson City, Missouri
Elaine Seele, Missouri American Water Company, St. Louis, Missouri
Robert L. Segar, Jr., Metropolitan St. Louis Sewer District, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Byron Shaw, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Nongluk Tunyavanich, Meramec Regional Planning Commission, St. James, Missouri
Richard Tuttle, City of Fulton, Columbia, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
George J. Wheeler, Department of Agriculture, Jefferson City, Missouri
Kevin Wibbenmeyer, Consolidated North County Levee District, St. Charles, Missouri
Robert Williamson, Kansas City Water Services, Kansas City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:15 a.m. and introduced Vice-Chairman Minton, Commissioners Greene, Kelly, Perry and Hegi; Diane Waidelich, Secretary; Jim Hull, Staff Director; and Deborah Neff, Assistant Attorney General.

ADMINISTRATIVE MATTERS

Adoption of June 26, 2002 Commission Meeting Minutes

Commissioner Greene moved to approve the June 26, 2002 minutes as submitted by staff; seconded by Commissioner Minton and passed with Commissioners Hegi and Perry abstaining.

Final Action on the 303(d) List

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, reported the commission had asked that staff look into what might happen if the 303(d) List is submitted late to EPA. She explained that states are required to submit the 303(d) List on

April 1 of even numbered years. Guidance was issued from EPA in November 2001 stating the date for submission of 303(d) lists had been extended to October 1, 2002. Submissions following the existing guidance are also due to EPA by October 1, 2002. Missouri also has a Memorandum of Understanding (MOU) between the Department of Natural Resources and EPA relating to total maximum daily loads (TMDL) lawsuits. Language in the MOU states that MDNR agrees to place on public notice a proposed list of impaired waters in accordance with section 303 of the Federal Water Pollution Control Act and to perform other necessary and beneficial actions in the development of the next 303(d) List. That list is required to be submitted to EPA no later than April 1, 2002. MDNR shall comply with EPA timetables in regard to the submittal of the 303(d) List. Following public participation and the appropriate and lawful procedure under Missouri Clean Water Law, MDNR shall submit to the Missouri Clean Water Commission a proposed list of impaired waters for the year 2002. The decision of the Missouri Clean Water Commission shall be submitted to EPA as the Missouri 2002 list. EPA agrees to promptly review and advise MDNR as to any such proposed list. Ms. Shannon stated this is what governs the date the list is to be submitted.

Senate Bill 984 and 985 will become effective August 28, 2002. This legislation requires that any waters of the states being classified as impaired be adopted by rule pursuant to Chapter 536, RSMo.

If the Clean Water Commission approves the 303(d) List prior to August 28, it will be submitted to EPA prior to that date. EPA then has 30 days to approve or disapprove the list. If the list is disapproved, EPA must prepare a list within 30 days of that disapproval. They must then issue a public notice, revise the list based on comments and transmit that list to the state. If the list is not submitted prior to August 28, the list would need to go through the rulemaking process. If the methodology is changed, it would have to be public noticed. Following the rulemaking procedures, a final rule would not become effective before the end of 2003.

Commissioner Perry asked what the minimum amount of time would be for a rule to become effective if the exact statutory requirements for rulemaking were followed.

Mr. Hull stated if everything goes exactly according to plan, at least nine months would be required. A rule such as this will require involvement at many levels and will probably take a few extra months to process.

Chairman Herrmann asked if this is assuming that the methodology document will be changed.

Ms. Shannon responded if the methodology document is not changed, the public notice period would not be required prior to moving into a rulemaking.

Commissioner Minton asked if the rule contains the methodology.

Ms. Shannon replied the methodology is a separate document and the statutory language that has been added only addresses the list itself.

Commissioner Minton asked if emergency rulemaking procedures could be utilized in this instance.

Ms. Neff explained there has to be an emergency situation that is an immediate danger to the public health, safety or welfare that requires emergency action where the rule is necessary to preserve a compelling governmental interest that requires an early effective date. She explained the best procedure to assess the fairness to all interested persons and parties under the circumstances and the scope of the rule has to be limited to the emergency itself.

Commissioner Minton asked if this is not a compelling governmental interest since the commission will most likely lose their right to develop the list to EPA.

Ms. Neff responded she does not know how a court will decide whether or not it's a compelling governmental interest. If the commission believes it is, that would be a basis for going forward with an emergency rule. If the court disagreed during a challenge, the emergency rule would be struck down. If the commission agrees that this is a compelling governmental interest to make a proposed list to EPA rather than have EPA make the list without any input, then the commission could move forward on it. Ms. Neff stated the main problem is that EPA has not said what the consequences of not providing them a proposed list would be. If they had said that, the commission would be in a much better position to decide what to do.

Ms. Shannon noted EPA has not told staff what their action would be.

Commissioner Minton stated if the commission does not submit a list, EPA will develop the list.

Commissioner Perry asked if that is known or if it is speculation.

Ms. Shannon stated there is no grant condition addressing this list. There is a grant condition relating to the 305(b) Report but not the 303(d) List. There does not appear to be a risk of losing funding related to a late or nonsubmittal of this list. Until the new list is approved by EPA, the 1998 303(d) List remains in effect.

Commissioner Minton stated if the commission does not approve a list today, a list will still exist and the commission will have the opportunity to promulgate a rule through the emergency rulemaking procedure or the regular rulemaking procedure. He asked if anyone from EPA is present.

There was no one present from EPA.

Commissioner Minton noted some input from the EPA would be helpful and he had hoped they would be present to assist in this process.

Mr. Hull noted these issues are all worth discussing but it might be beneficial to continue with the presentation to see what the comments, responses and recommendations are.

Chairman Herrmann noted he believes substantial governmental interest could be demonstrated in that there are 221 stream segments indicated on the list. In the past four years, there have been 13 TMDLs developed. If development of 221 TMDLs was a requirement, or 208 additional TMDLs, that is an improbable task for staff to complete.

Ms. Shannon stated this issue has been discussed a number of times with EPA. There have been internal discussions and EPA was invited to attend this meeting. Information received from EPA indicates that they could consider Missouri's failure to submit the list timely a nonsubmittal and, therefore, develop the list for Missouri. EPA could, but staff does not know if they would, base it on the proposed 2002 list. They are not compelled to do this if the department does not submit the list. EPA may be legally obligated to develop the list themselves but they have not committed to this. EPA could also take no action waiting on staff to submit the list late. Ms. Shannon reported EPA has not made known what the likely option would be.

Commissioner Greene asked if the potential exists to be held in contempt relating to past court actions if the list is not submitted on time.

Ms. Shannon responded the MOU is between the department and EPA. The Consent Order does not involve the department.

Responding to Mr. Hull, Ms. Shannon noted the fact that EPA would be in contempt rather than the state might compel them to move ahead with the list. The language in the MOU does address the fact that the Missouri Clean Water Law has to be followed.

Ms. Shannon apologized for the various versions of the list that the commission received. She noted the most recent public notice ended August 2 and this put staff under significant time constraints to develop a final product. Ms. Shannon noted the department is required to start this activity using the 1998 list. Actions are taken on those waters such as adding waters where data is available, or delisting or changing if there is data to show this action is warranted. All of the waters on the 1998 list have to be addressed in some way. The Clean Water Commission can, and has in the past, added specific waters or made changes to the list itself.

Commissioner Perry asked what action the commission can take to recognize that some of the waters on the list may not have factual data to support placing them on the list and perhaps should be listed in the 305(b) Report instead.

Ms. Shannon responded the commission could recommend that the waters be removed from the list.

Commissioner Minton asked if a stream could be deleted from the list without going through the procedure for deletion.

Ms. Shannon responded neither the methodology nor any of the rules specifically address what action the commission can take as far as she is aware. There is a concern that if significant action is taken, the action has not been public noticed which could raise concerns about the public participation aspect, specifically additions to the list. Ms. Shannon noted EPA will also take actions on the list.

Commissioner Perry noted there would not be a public notice problem with deleting waters from the list.

Ms. Shannon responded unless someone objected to the deletion this should not be a problem.

Commissioner Minton asked if a TMDL is developed for every stream on the list regardless of category.

Ms. Shannon replied they are not.

Commissioner Minton asked what categories staff is required to submit TMDLs for.

Mr. Hull stated the objective of bringing the list to the commission is for the commission to approve or disapprove the list through whatever means is necessary

Chairman Herrmann noted item four in the MOU states MDNR agrees to develop TMDLs according to the general schedule and procedures contained in the approved strategy document which means every water on the list should have a TMDL.

Ms. Shannon replied the federal regulation describes what does and does not require a TMDL. She noted it was pointed out at the last meeting that the June public notice did not contain the categories that were described in the methodology. Those were added and the list was renoticed. Those categories relate to what are called parts in the federal regulation Part 1, which is category 1 on the list, says waterbodies impaired by one or more pollutants as defined in section 130.2. A TMDL is required for waterbodies on part 1 of the list. A TMDL is not required for waterbodies on Part 2 of the list. Part 3 are waterbodies for which EPA has approved or established a TMDL and yet water quality standards have not been attained. Part 4, waterbodies that are impaired for which the state demonstrates the water quality standards will be attained by the date of submission of the next list as a result of implementation of technology based effluent limits. A TMDL is not required for waterbodies on part 4.

Responding to Commissioner Perry's question, Ms. Shannon said a TMDL is not required for waterbodies on part 2 of the list. This is from EPA's federal regulations, 40 CFR 130.27.

Chairman Herrmann stated there are 148 stream segments in category 1 which would mean there would have to be 148 TMDLs developed; there are currently 13.

Commissioner Perry noted it took over four years to develop these.

Ms. Shannon stated 27 TMDLs have been developed during this time. There are 32 TMDLs scheduled for completion in 2003.

Commissioner Minton asked if these are in addition to what has already been completed.

Ms. Shannon noted the learning curve and resolution of procedural issues took quite a bit of time. The 27 TMDLs were completed in the last several years.

Chairman Herrmann stated that all of these have not been distributed to the commissioners since he has only 13 TMDLs.

Commissioner Perry asked if it's only category 1 that required TMDLs.

Commissioner Minton noted category 1 eventually gets to move to category 3 as 1 is developed.

Chairman Herrmann asked how a TMDL could be developed for atmospheric deposition of mercury.

Ms. Shannon responded this will be extraordinarily challenging but the requirements under the law for the 303(d) List require listing of those waters fitting the definition of impaired regardless of the source and those waters fit the definition of impaired. Ms. Shannon noted she assumes that the TMDL will not be expected to immediately remedy the situation, however, it brings to attention the need to address mercury across the nation.

Commissioner Perry noted this has been decided by some studies in fish but there is no hard data that there is a mercury problem at a certain segment of a certain river.

Mr. Ford replied there is hard fish tissue data on elevated levels of mercury in the fish in the 40 streams listed for mercury.

Chairman Herrmann stated this data is 15-20 years old.

Mr. Ford replied some of the data is probably as old as 15 years with some of it being only several years old.

Responding to Commissioner Perry's question, Mr. Ford stated he would have to check to see how much data was only several years old. He noted the monitoring program has been at about the same level since 1980 so it's probably about equal proportion.

Commissioner Perry asked if the majority of this data was based on a book.

Ms. Shannon replied this is habitat loss.

Commissioner Minton asked for an explanation of the 13 TMDLs provided to the commission and the 27 TMDLs that have actually been completed.

Mr. Ford replied he believes this is the discrepancy between the total number of TMDL documents, which is probably 13, and the total number of TMDLs which is waterbody segments within them. Each segment gets counted as a TMDL.

Commissioner Minton asked if the method for developing load limits will change when the EPA comes out with its new rulemaking.

Ms. Shannon responded the potential EPA rule could affect the way this is addressed but the modeling won't be substantially changed. The procedure and the way in which the pollutants are addressed would potentially be changed in the way in which staff manages the TMDL after it is developed. Staff does not know at this time what that rule will be. The staff's rulemaking will not have an affect on the way TMDLs are developed.

Ms. Shannon stated staff believes the commission can take action on specific items on the list and EPA can approve or disapprove and take action on specific items on the list. EPA can add waters and delist waters since they have the final authority.

Ms. Shannon stated the proposed changes to the list are based on the 2002 methodology document that was public noticed in 2001. The document addresses data quality, sources of data generally used by the department, and how the data is addressed in this process. Data and evidence submitted by those outside the department is used in accordance with the methodology document.

The proposed list contains 227 waterbody segments of which 191 waters received no specific comment but were potentially affected by some of the general comments that were received. The most frequently mentioned waters in the public comments were Peruque Creek with 132 comments, Dardenne Creek with 101 comments, Lake St. Louis with 13 comments, Femme Osage Creek with 9 comments and 5 comments on the Missouri and Mississippi Rivers. Other waters receiving specific comments had 3 or fewer comments. Ms. Shannon reported the vast majority of the comments on Peruque, Dardenne, Lake St. Louis and Femme Osage were simply requests to add the waters to the list.

Comments resulting from public noticing prior to the June 7 public notice were incorporated in the version of the 303(d) List put on public notice on June 7. Ms. Shannon summarized comments received June 7 through August 2.

Comments: Staff did not follow the 2002 methodology document regarding designation of categories. The department did not include priorities described in the methodology document. The Clean Water Act does not provide for categories.

Responses: The department issued a new public notice including the four category listings and the priorities. The four categories are referred to as parts in the methodology document.

Commissioner Perry noted she is particularly interested in the 1H category and priority. She asked if there is hard data that is less than five years old that says that these waters that have high priority are a threat to human health.

Mr. Ford responded not all of the data is less than five years old. He continued that older data is used when staff knows of nothing that would have changed the status or representativeness of that data. If staff believes something has changed so that the data is not representative of current conditions, staff will not use it.

Commissioner Perry asked why there is no way to determine what kind of data was used for each of the listings. She noted she is concerned with the 1Hs because those are the ones that are of risk to human health.

Mr. Ford replied the high priority include risk to human health in addition to other types of water quality problems, other than aesthetic problems that are highly treatable. Highly treatable problems get moved up into the high priority because these are problems that are easier to solve. They would include not only human health problems but problems with impairments to aquatic life.

Commissioner Perry stated the majority of these tend to be wastewater treatment plants, which would seem to be a highly solvable problem. She asked which of those that are other than the wastewater treatment plants are based on hard data that no scientist is going to argue with.

Mr. Ford asked if she was referring to the problems that are human health problems.

Commissioner Perry asked which ones of the 1Hs are not human health problems.

Mr. Ford responded he would have to go over the list with Commissioner Perry to determine this. All the ones for mercury would be human health problems.

Commissioner Perry asked if mercury was one of the 1H pollutants.

Ms. Shannon responded mercury was a medium priority.

Mr. Ford noted he believes if there was a human health problem and there was very little chance of successfully addressing it, that would drop it from a high to a medium category.

Commissioner Perry noted it's pretty obvious that the comments are somewhat concerned about the data and the quality of the data. She asked which items that are a category 1 are based on scientific data that Mr. Ford would personally certify as hard data.

Mr. Ford replied all of the data for waters on the list, not just the high priorities, has to have some sort of solid documentation in order for the waters to be put on the list.

Commissioner Perry responded she does not want some sort of solid documentation.

Mr. Ford noted the waters are not listed as a result of opinion. There has to be documentable evidence that there is a problem.

Commissioner Perry noted she is assuming that the 1Hs are "absolutely convinced" data and that's why she is surprised that data that is more than four years old would be used. Commissioner Perry again asked which waters don't have absolute hard data and which ones do.

Mr. Ford responded there is documentation that a problem exists for all waters on the list.

Commissioner Perry stated data is not highest quality data; there are a lot of different ranges of data. Data that comes from volunteers is supportive data and data has been split into two categories depending on its age.

Mr. Ford stated there are four data quality types discussed in the methodology document and also discussed is how data from these four types is used. Generally it has to be level 2 data or higher to be used. Level 1 data will be used in special conditions where it is highly demonstrative that there is a problem.

Responding to Commissioner Perry's question, Mr. Ford stated level 4 is the highest quality data with level 1 being the lowest.

Commissioner Perry asked how much of the 1Hs are level 4 data.

Mr. Ford responded he would have to provide a print out of all that information.

Commissioner Perry stated she wants to know how much of the 1Hs are level 4 data.

Mr. Ford responded level 4 data is aquatic community data which requires sampling of two components of the aquatic community fauna, either algae, aquatic invertebrates or fish community data. He stated he does not believe any of the data on the list is level 4. The vast majority of the data on the list is water chemistry data or fish tissue data which is basically level 2 data.

Ms. Shannon stated that data staff believes is quality assured data must be addressed in the list. EPA puts forward specific requirements as far as how the list is addressed. Ms. Shannon noted John has been extremely conservative in terms of making sure that the data is reliable and quality assured following EPA guidance as well as our methodology.

Commissioner Perry stated the commission is receiving, as staff did, correspondence from other scientists that strongly questions the quality of the data and the response from the department is it's good enough if conditions haven't changed. But we're talking about 15 year old data in watersheds where the conditions have significantly changed.

Mr. Ford responded he would guess that none of the scientists that looked at any of the data actually reviewed the quality assurance/quality control data from the laboratory or from the field quality assurance documents that went along with collection of that data so they would not be qualified to comment on the quality of the data. The age of the data is another matter

but, as long as nothing has significantly changed to cause that older data to not be representative of current conditions, staff must use it otherwise a problem may be ignored.

Ms. Shannon asked if she was referring to the sedimentation data brought up in relation to Peruque Creek.

Commissioner Perry replied it may be the sedimentation data but she was also thinking in terms of some of the chemical data. She noted she has a real problem with old data because things do keep changing and testing techniques improve and the ability to monitor has been remarkably improved over the last four years. Commissioner Perry noted she is looking for the instances of where it can be better and the instances where this is what can be banked on.

Ms. Shannon stated she suspects it can be better in every case but staff believes the listing that was developed was based on quality assured data and appropriately interpreted data. The TMDL process would first involve additional monitoring to more thoroughly evaluate the condition before a TMDL is developed.

Commissioner Perry asked if they were monitored before they were placed on the 303(d) List.

Ms. Shannon replied there is data to support the listing. The monitoring done for the TMDL would be somewhat different and more in-depth.

Mr. Ford stated quite often there is enough data to put a water on the list but to actually do the TMDL and figure out how to fix the problem requires more data. In many cases the process of doing the TMDL has generated more data collection.

Commissioner Perry asked if there is anything under the 1H category where there was enough data to put it under the 1H category that did not have some laboratory analysis involved.

Ms. Shannon noted staff would have to go through the list to determine this.

Commissioner Perry stated she would like to have an evaluation of the quality of the data of the 1Hs; if it's older than five years old, if it's actual hard chemical data or if it's based on something that has been extrapolated and is assumed to be there.

Commissioner Greene stated staff already said they have data for all this.

Commissioner Perry stated there is a difference in the quality of the data and that is what everyone is arguing about.

Commissioner Greene responded that staff has already said they have certain quality assurance steps to go through before the data is usable to put waters on this list.

Commissioner Perry noted she would like this information because she is willing to accept different kinds of data in a more positive way.

Chairman Herrmann asked how the three that are listed as unknown source, or the four that are listed as unspecific source, are defined.

Mr. Ford responded unspecified pollutants are probably based on biological data where a biological impact was showed but there is no information on what particular chemical or what condition was causing the problem. The Little Osage and Marmaton Rivers are not specified and were added by EPA to the 1998 list without a pollutant included. Mr. Ford stated staff proposes to delete the Little Osage because staff believes it is a natural condition rather than a problem.

Chairman Herrmann stated category 3 is defined as waters for which a TMDL has been established and approved by USEPA but the water quality impairment has not yet been corrected and there are 12 category 3s listed, which somewhat corresponds with the 13 copies of TMDLs that have been received. There are 17 for which no category is listed which he does not know how to define.

Ms. Shannon noted those that have been proposed for deletion do not include a category.

Chairman Herrmann asked why they are on the list if they are proposed to be deleted.

Ms. Shannon replied that staff has to address every water that was on the 1998 list and what action has been taken in relation to each water.

Comments: Several comments were received that the department should use EPA's new guidance.

Responses: The department did evaluate this guidance which was provided to the states in November 2001 well after the department had initiated the new listing and conducted significant public participation. The department chose to use its own public noticed methodology document. The following were factors in that decision: 1. The state is not required to use EPA's new guidance since it is in the form of guidance, not rule. EPA reports that some other states are using the new guidance and some are not. The specific language in the guidance gives the state the option to choose which way it wants to go. 2. EPA has stated they plan to promulgate the new guidance as rule. It is expected to change substantially before it is finalized, thereby negating any potential for efficiencies by implementing the guidance now. 3. All drafts of the proposed 303(d) List that have been placed on public notice were developed using the department's public notice 2002 methodology document. There had been no public noticing of either the guidance itself in Missouri or a list developed with that guidance. 4. The department's 2002 methodology document was placed on public notice by DNR as the method that we would use in developing and reporting the list. EPA's draft guidance was not.

Commissioner Perry asked if the methodology itself was open for public comment.

Ms. Shannon responded it was.

Commissioner Perry asked if changes were made in responses to this public comment.

Mr. Ford responded several small changes were made as a result of public comment.

Commissioner Perry asked if it was adopted as a rule.

Ms. Shannon responded it is not a rule.

Commissioner Greene noted the commission approved the methodology document last year.

Ms. Shannon recommended no changes based on these comments. When EPA does promulgate the guidance as rule, staff will follow it and will investigate the use of it for the next listing cycle.

Commissioner Minton asked if the rule established will be negated once the list is promulgated by rule from EPA.

Ms. Shannon responded it would depend on what EPA's rule contains. If it addresses categories and there are categories on our list, that potential exists.

Comments: Several comments were received regarding the waters that were added for mercury. Three comments requested that the waters not be included on the list. Questions were raised about the age of the data and the appropriateness of using fish advisories as the reason for listing. Another comment indicated that terrestrial sources should be listed, not atmospheric deposition.

Responses: The fish consumption advisories issued by the Missouri Department of Health and Senior Services is consistent with USEPA guidelines for listing waters as impaired. Staff's methodology does specifically address fish advisories. Since these waters are impaired and the state does not have adequate pollution control requirements in place to prevent this impairment, these waters meet the definition of a 303(d) listed water and must be included on the list. Data available to the department supports the listing of the source as atmospheric deposition. Ms. Shannon recommended no changes to the list in response to these comments. Staff recognizes the challenge of developing a TMDL for this and will be working to see how it can be addressed.

Commissioner Perry asked why this would not be a candidate for the 305(b) Report rather than the 303(d) List.

Ms. Shannon replied, in this case, the data shows that there is an actual impairment and that it does not meet its designated use.

Commissioner Perry asked what other states have done relating to atmospheric deposition.

Ms. Shannon replied she is not aware of what other states have done on this issue.

Comments: Several comments addressed habitat loss. Comments requested that all waters listed for habitat loss be removed from the list, that habitat loss streams stay on the list but that habitat loss be better defined, that streams be listed for sediment or whatever the appropriate cause is rather than habitat loss and that habitat loss cannot be addressed by a TMDL and, therefore, is not appropriate for inclusion on the list. The reason for these comments is that habitat loss is not a pollutant, it is pollution.

Responses: Many waters in Missouri have in the past been reported as being impaired by sediment. Much of the justification for impairment of these waters came from historical studies of fish distribution in the state that showed many fish species were either extirpated from entire watersheds where they had previously lived, or lives in fewer locations within the watershed than previously. Conversations with fish biologists responsible for these studies, Dr. William Pflieger, suggested that the increased sedimentation and turbidity of the water were believed to be major causes of these declines.

Many of these streams were previously listed for sediment. Use of the term sediment was in part correct. However, after the 1998 listing cycle, when DNR began writing the first few TMDL documents for EPA review, staff realized the importance of making as accurate and complete a description of the problem as possible. Factors other than sediment, such as channelization, destabilization of stream banks, loss of permanent vegetation from the riparian zone, loss of channel heterogeneity and in-stream woody debris as well as changes in watershed hydrology, also played a role in declining fish communities. Consequently, the department changed the listing to a term inclusive of all these concerns, habitat loss. While evidence supports the listing of these streams due to loss of habitat, the department does not consider it appropriate to identify a specific pollutant when the cumulative impact of many conditions are believed to be causing the impairment, as staff believes is the situation in these streams.

These streams do not meet their designated use, specifically, that uses protection of aquatic life as defined in Missouri's Water Quality Standards. They do fit the criteria for inclusion on the 303(d) List. A comment was received concerning a better definition of habitat loss and the department states that aquatic biologists nationwide recognize that habitat assessment methods needs to be approved and the department is working with scientists from the University of Missouri at Columbia to continue studies on this topic. The department anticipates supporting additional research in this area throughout the next five to ten years.

The streams listed for habitat loss are identified as category 2 in the proposed list. In the department's methodology document and in the federal regulation, this is referred to as Part 2. The Federal regulation says that waterbodies impaired by pollution as defined by Section 130.2(C) but not impaired by one or more pollutants goes into category 2. A TMDL is not required for waterbodies on Part 2 of the list. The concerns raised about the inability to develop a TMDL for these waters is addressed by the placement on category 2; there will not be a TMDL. One potential option the commission could consider would be to add a column to the list called pollution or condition rather than pollutant and these waters could be moved

under that column. It would not change placement on the list or the action that is taken. It would be an indication that these don't fit the definition of pollutant.

Commissioner Perry stated that the Department of Conservation has made great strides in restoring some streams to the point that some aquatic life has been reestablished. If the data would be more recent, perhaps some of the waters would not even be threatened.

Ms. Shannon responded staff has not received any information that this is the case.

Commissioner Perry asked if anyone has checked.

Mr. Ford responded the data that this was based upon was a book of fish distribution information by William Pflieger. This book was recently revised and staff has reviewed this new edition.

Commissioner Perry asked if this was the 1998 version that ended with data from 1995.

Mr. Ford stated it is the last edition. The information is the historical distribution of fish so the value of the data is that some of it is very old and shows the changes since the early part of the century.

Commissioner Perry asked if there has been any change in these streams since the list was developed. It is not known if there's any increase or decrease in fish habitat although it is known that there have been some tremendous strides done in conservation in restoring stream banks and stopping some of the sedimentation. Commissioner Perry asked if there is anything that has been monitored in that time period.

Mr. Ford responded the most recent statewide data on fish communities is the revised Pflieger book from the late 1990s.

Ms. Shannon recommended no changes to the list in response to these comments. She reiterated the option of changing the columns on the list.

Comment: Low dissolved oxygen below dams should not be listed as a pollutant because the problem is due to a natural condition, not the addition of a pollutant.

Response: Water quality data indicates that these waters do not meet their designated use as defined in Missouri's Water Quality Standards. The waters do fit the criteria for placement on the list. However, the department recognizes that low DO due to prolonged water residence time in the hypolimnion of the lake is not amenable to a TMDL approach since it is a condition, not a pollutant. These waters are identified as category 2 in the proposed list.

The federal regulations do not require a TMDL for these waters. Ms. Shannon recommended no changes to the list based on these comments. If a condition column were added to the list, low DO would also be placed under that column.

Comment: Requested that Hinkson Creek be removed from the list, indicating that no pollution or condition of impairment is specified and that there is not supporting data for listing the water.

Response: The department identified the pollutant for Hinkson Creek as "unspecified." Ms. Shannon reported the summary she provided to the commission members last evening said Hinkson Creek was listed as unknown rather than unspecified.

Commissioner Perry asked what the difference is between unknown and unspecified.

Ms. Clifford replied unknown is based on aquatic community data where the aquatic community is known to be impaired but chemical or other data is not available to identify the pollutant. Unspecified refers to the two waters added by EPA and Hinkson Creek.

Commissioner Hegi stated a decrease in animal population is seen because of an increase in their predators. It's just like saying things are bad because you don't have the same fish distribution. Just because they are not in the creek does not mean the creek is impaired. A lot of events is because of the natural increase and decrease of some of the organisms. Commissioner Hegi noted he had attended a four states meeting last year and said he thought he could make just about any stream pass or fail depending on what he wanted to do and where and when he took samples and no one had disagreed. Commissioner Hegi continued that he had asked what was to be done if there is a TMDL that shows 10 or 20 percent above the nutrients required and there had been no answer.

Commissioner Greene noted most of this data is not a one-time check because there are natural fluctuations in populations. Data is collected over a period of time, not at one spot. Because all these things are interrelated with each other and one does eat another and so forth, paying attention to those fluctuations gives a lot of information about what is happening. Looking at the long-term is where you get the picture; not one-time data collection. Commissioner Greene stated good data always goes to different spots at different times to get that good picture. She noted she does not believe any of the data is a one-time shot. It would not be a true picture to do anything one time; that is why long-term studies are needed and why a lot of this data is more than a one-time shot.

Ms. Shannon stated she discussed with EPA the use of the terms unspecified or unknown and the appropriateness of the use of those terms. EPA has indicated that this designation is appropriate and that the expected response to such a designation would be for the state to further evaluate the water to identify the specific pollutants. The department did not have substantial data for this listing. Water quality studies have been and are being conducted to assess the condition of this stream. The department expects to have conclusions from those studies within this year. Ms. Shannon suggested removing Hinkson Creek in response to this comment because of the lack of substantial data to support the listing.

Commissioner Greene asked if this is one of the waters that EPA added.

Ms. Shannon responded the department added it.

Commissioner Perry noted five miles and six miles were listed for Hinkson Creeks as unspecified. She asked if both are recommended for deletion.

Ms. Shannon responded they are contiguous segments so the entire reach is proposed for deletion.

Commissioner Perry asked if Hinkson Creek is then a candidate for the 305(b) Report.

Ms. Shannon acknowledged it is.

Chairman Herrmann asked why there were three listings for the same segment of the Lake of the Ozarks.

Mr. Ford responded because three types of solutions will be needed. Any time there are different types of problems in the same waterbody, staff may require different TMDLs so they are listed separately.

Chairman Herrmann asked if the cause for fish trauma is gas supersaturation.

Mr. Ford responded the fish trauma is actually caused by the high velocity flows when there is full power generation, which actually injures and kills fish.

Responding to Chairman Herrmann's comment, Mr. Ford noted staff has listed three streams for chlorine disinfection even though they were very small sections of stream just because they did meet the definition of impairment in those small sections.

Chairman Herrmann noted in those small sections but not the total stream.

Mr. Ford noted the 50 acres listed was to indicate a relatively small portion of the Lake of the Ozarks.

Commissioner Perry asked if the 50 acres was just a guess or if the exact amount is known.

Mr. Ford replied a number had to be listed so staff indicated just a small portion; an exact number is not known.

Commissioner Hegi asked if that area could move.

Mr. Ford responded it is related to what is happening at the outflow of the dam so it will be the upper most part of the Lake of the Ozarks.

Ms. Shannon noted the impact could be further from the dam if the velocities are extremely high.

Commissioner Hegi asked if there is any way to solve this problem.

Mr. Ford replied he hopes a TMDL will come up with a way to reduce this.

Commissioner Perry noted it's a category 2 so a TMDL won't be completed.

Mr. Ford noted it's then on the 305(b) Report, which gives the opportunity to discuss the water quality impairment with the operating authority of the dam.

Commissioner Perry noted this then goes back to whether this is a 305 problem or a 303 problem.

Mr. Ford stated all water impairments are on the 305(b) Report and a subset of those qualify as 303(d) waters.

Commissioner Minton asked if Hinkson Creek will remain on the 305(b) Report.

Mr. Ford responded as long as it's impaired, it will be on the 305(b) Report.

Ms. Shannon noted particularly in response to the data that is being generated now and will be evaluated within the next year, there will be more substantial data to justify listing or not listing Hinkson Creek during the next round of changes.

Commissioner Minton noted because of a public comment that was made, a stream was deleted from the list because there was not substantial data for it to be on the list. Some of the concern revolves around how a stream makes it on the list if there has been a study of the data that was presented to the agency.

Ms. Shannon replied she understands this is the only water that was listed in this manner, which was at the request of the department. She continued that the other streams added by EPA are similar in that respect.

Commissioner Perry noted those have also been proposed for deletion and asked if this was because staff believes good data is not available.

Mr. Ford responded that is correct.

Comments: Requested that Stinson Creek be removed from the list. One comment further noted that the length of the impairment had been reduced in the proposed list as compared to the 1998 list.

Responses: Available water quality data indicates that minor impairment does exist on this segment. The department plans additional water quality survey work this summer to clarify the degree of impairment. Ms. Shannon recommended no change to the list in response to this comment.

Comment: Indicated that the listing is in violation of Chapter 536 of Missouri's law and that it ignores the intent of Missouri's legislature by not creating this list as a rule. The commenter further requested that the Missouri and Mississippi Rivers be removed from the list.

Response: The department believes the listing has been prepared in accordance with state and federal laws and rules. Further, it is the understanding of the department that legislators involved in the recent legislative action to require the 303(d) List to be promulgated by rule after August 28 were cognizant of the plans by the department to proceed with the 2002 303(d) List as is being proposed, by submitting the list to EPA prior to August 28. To not do this would result in the state not meeting the October 1 deadline for submittal of the list. The department fully intends to comply with the new statute and anticipates developing the next 303(d) List through the rulemaking process. The Missouri and Mississippi Rivers are listed in accordance with federal regulations. The commenter did not provide, nor does the department have, data to support a change in this listing. Ms. Shannon recommended no change to the list in response to this comment.

Commissioner Minton asked if the Missouri and Mississippi Rivers were included in the category requiring a TMDL in 1998 or did the EPA take this action.

Mr. Ford replied it was included as a category 2, which would be a condition rather than a pollutant.

Commissioner Perry asked if the Mississippi was listed for lead and zinc.

Mr. Ford replied that is proposed for addition this time.

Commissioner Perry asked if this is based on recent data.

Ms. Shannon replied the Herculaneum issue is quite recent.

Comments: Requested the addition of the following waters to the list:

River des Peres for fecal coliform and for not meeting the "free from" general criteria discussed in the Water Quality Standards.

Response: Because River des Peres is not designated for whole body contact recreation, there is no bacterial water quality standard for the stream, hence it cannot be listed for bacterial contamination. The commenter did not provide, nor does the department have, observational or chemical data of significant quality to support listing this water for the "free from" general criteria.

Comment: Brush Creek for low DO.

Response: Brush Creek is an unclassified stream and therefore there is no DO standard and no violation of the standard so it does not meet the criteria for listing.

Comment: Indian Creek in Jackson County for PCBs in relation to whole body contact recreation.

Response: The comment is correct in stating that Indian Creek is classified for whole body contact recreation, however, water quality criteria for PCBs are not applicable to this designated use. The whole body contact designation carries standards for fecal coliform levels. The PCB standard relates to fish consumption levels. The commenter did not provide, nor does the department have, in-stream water quality data available regarding PCB levels in this stream. Ms. Shannon reported the department's federal facilities staff is involved in risk assessment with the facility that has a PCB discharge.

Commissioner Minton asked if it is necessary to include the designated use of these streams on the 303(d) List. He asked if everything on the 303(d) List is assumed to be whole body contact.

Mr. Ford responded there are a few unclassified waters. Everything on the list is there because it has exceeded criteria for a designated use for that particular waterbody. In preparing the list, the standards were used as they exist now.

Commissioner Minton noted it might be good to be able to see what the designated use is on the list.

Comment: All whole body contact streams of Greene County be listed for pathogens or fecal coliform.

Response: The department does receive data from local health departments and considers this data in development of the list. Water quality data on these streams in Greene County does not support the listing of these streams as requested. The methodology document specifically describes how fecal coliform data is to be used and the available data does not support the listing. Ms. Shannon recommended no changes to the list based on these comments.

Comment: One commenter requested the following changes:

Peruque and Dardenne Creeks should have added as pollutants Total Suspended Solids, fecal and nutrients from wastewater treatment plants.

Response: Dardenne Creek is on the proposed list for habitat loss and Peruque Creek is listed for Nonvolatile Suspended Solids or sediment. Neither water has whole body contact as a designated use, thus, the fecal coliform standard does not apply. Data on Dardenne indicates that ammonia standards are being met. There are no standards for nitrate or

phosphorus in relation to their request for nutrients. The commenter did not provide, nor does the department have, data to support change in listing of these streams.

Chairman Herrmann asked about the downstream uses of Lake St. Louis.

Ms. Shannon responded the data for Lake St. Louis would need to be used for the potential for that.

Mr. Ford noted staff continues to get the bacterial data for Lake St. Louis and Lake St. Louise and evaluate it for compliance with water quality standards.

Commissioner Perry asked if there are water quality standards for nitrate or phosphorus.

Mr. Ford responded there is a drinking water standard for nitrate nitrogen; 10 ppm as nitrogen.

Commissioner Perry asked if there is no standard for either nitrate or phosphorus for creeks for which the use is not drinking water.

Mr. Ford noted that is correct.

Commissioner Perry asked if nitrogen and phosphorus are being referred to for the streams that have nutrients.

Mr. Ford replied they are and the problem is basically that it exceeds the general criteria.

Commissioner Perry said it's down as a pollutant but we really don't have that as a pollutant because we don't have the standards for it so we don't know if it exceeds standards.

Mr. Ford responded that we have to list it if it's impaired and meets other 303(d) criteria like it's not being adequately controlled. Then the list requires a pollutant so if it goes on the list because of general criteria, which would be objectionable bottom deposits or growth of the algae that are in the stream, the most straight forward way to do that is to list the nutrients that are causing that algal growth.

Commissioner Perry asked if a pollutant needs to be identified to move something from the 305(b) Report to the 303(d) List.

Mr. Ford replied the 303(d) List requires some listing of a pollutant if it's known. In this case nitrogen and phosphorus are listed as the causative agents.

Commissioner Perry stated it's not known if this is a pollutant because there is no standard.

Ms. Shannon stated the standard that is being violated here is the general criteria, not a nutrient standard. Staff believes the reason for that violation is the level of nutrients in the water. Ms. Shannon further explained that what causes the water to be listed is not the presence or absence of a pollutant but the violation of the standard.

Commissioner Perry asked if there is data on the amounts of the nutrients.

Mr. Ford responded there is data for the streams listed.

Commissioner Perry stated we have the information but we don't know if it meets any standard because we don't have any standards so how do we know that those numbers are good or bad.

Mr. Ford responded the waters aren't on the list because of the analytical amounts of nitrogen and phosphorus in the water but because the amount of algae exceeded the general criteria.

Commissioner Perry stated we're saying the reason it exceeded the general criteria is because of these nutrients which we're saying are in excess but we're calling them an excess of something about which we have no level to say they are in excess of because we have no standard.

Ms. Shannon stated there is scientific information about the impacts of high nutrient levels in water but they are not promulgated in rule as standards. The department is involved in work in the region to develop nutrient criteria in the future.

Commissioner Perry stated we are calling that the pollutant on the list.

Ms. Shannon responded that is because it is the cause of the violation of the general criteria. She explained that issue comes up in the next comment.

Comment: Sewer Branch, also known as Pearl River, be listed for nutrients with Sedalia wastewater treatment plant as the source.

Response: Missouri does not have applicable water quality standards for nutrients, nitrogen and phosphorus. The department has in some instances interpreted high nutrient levels to be a violation of narrative criteria, the general criteria that has been discussed, because of the resultant objectionable or harmful conditions. A review of existing data did not support this change to the list, and the commenter did not provide data to support the request.

Commissioner Perry asked if the criteria data of Sewer Branch had not been violated. She continued sometimes nutrients are called pollutants where we have no standards and here someone is claiming to have the same problem and staff says it's because of general criteria but in this case it may not be which brings up an arbitrary and capricious problem.

Ms. Shannon responded the specific comment related to nutrients in that case which is why it was addressed. In all cases, the waters on the list do not meet a water quality standard.

Commissioner Perry stated Sewer Branch is not on the list.

Ms. Clifford noted the Elk River and the James River were listed because there is very substantial trend analysis data that the levels of nitrogen and phosphorus are increasing rapidly, and the visibility in Table Rock Lake is decreasing rapidly. They were also listed based on citizen complaints within recent years. Numerous complaints have been received from regional offices on the Elk River and on the James River.

Commissioner Perry noted she has no problem with that.

Ms. Clifford continued that no complaints have been received from citizens related to algae by River des Peres or Sewer Branch.

Ms. Shannon stated Sewer Branch is not presently listed.

Commissioner Perry asked if there was no criteria problem there.

Ms. Shannon responded there is no data to indicate there is a criteria problem.

Comment: The terms Unknown or Unspecified should be replaced with the specific contaminants causing the impairment.

Response: These listings occur when biological data indicates that toxicity to aquatic life is occurring but the specific toxic agent has not yet been identified. Ms. Shannon noted in the case of unspecified, it occurs when we don't know the reason it was listed. The waters are not meeting their designated and do fit the criteria for inclusion on the 303(d) List. Discussions with EPA indicate that this listing is appropriate and hopefully would lead to increased monitoring. Ms. Shannon recommended no change in response to these comments.

Commissioner Minton noted if a water does not meet the designated use and it goes on the list, he'd like to know what the designated use is.

Comment: All persons, organizations or their properties that are on the waters identified on the list should be included in the public notice mailing list.

Response: Ms. Shannon noted the department makes every effort to include those that are potentially impacted and will strive to do a better job with that. The commenter further stated that once a problem is fixed, the water should be immediately dropped from the list. The process for removing a water from the list is addressed in federal regulation and methodology, and the department must follow these regulations. Removal of a water from the list is part of the listing process and can be done only when the list is reissued. Ms. Shannon recommended no changes based on this comment.

Comments: Requested removal of waters listed for atrazine.

Response: The department routinely receives data on waters used for drinking water. One of the constituents reported is atrazine. Current data is evaluated to determine if the level of contaminant is meeting water quality standards. Some atrazine contaminated waters have been removed from the list because data indicates the atrazine levels have dropped to a level that meets standards. Ms. Shannon noted this is a very positive development and a success story for the communities involved in this. However, the water quality data indicates that the waters on the proposed list still do not meet water quality standards. Ms. Shannon recommended no change to the list based on these comments.

Commissioner Perry agreed that it is great that some waters are being delisted for solving the atrazine problem and people should be aware there are some great studies and some great work on the part of 319 grants. The agricultural community has really gotten behind trying to stop any of the atrazine problem. Commissioner Perry stated the Mark Twain Lake said there was no atrazine problem when they provided water to her seven years ago, yet they were listed on the 1998 303(d) List as having an atrazine problem. The commission recently approved a grant to the Clarence Cannon Wholesale Water Commission to clean up the atrazine problem and they are now being delisted for not having an atrazine problem. She asked if they will offer to give some of the money back or if the data is incomplete.

Mr. Ford replied just because the standards aren't met does not mean they don't have an atrazine problem now or in the future. The standard is 3 micrograms per liter. If the long-term average is over that, it is listed. If it's under that, it is not listed or it is taken off. Mr. Ford noted he believes the level is still high enough for the department to be concerned that there is potential to get worse and a grant is indicated for any of the communities that are still in the 1-2 microgram range that may still have an atrazine problem.

Ms. Shannon reported the selection criteria was based on the 1998 303(d) List.

Commissioner Perry asked if they received higher priority because they were on the list.

Ms. Shannon replied they did. The project is a watershed-based approach to address all pollutants in the watershed. One of the concerns they had was nutrients in the watershed so it was going to go beyond the issue of atrazine.

Commissioner Perry noted they are not listed for nutrients but for atrazine and mercury.

Ms. Shannon responded they are not but a watershed approach is the appropriate way to protect water and in this case the specific project was taking that approach building on previous successes. Because the water is used for drinking water it was considered a high priority for protection. 319 requirements do also place a priority on waters that nearly meet the 303(d) listing. Ms. Shannon stated she believes awarding of the grant funds is still appropriate.

Comments: Requested that the department not list Brush Creek in Kansas City

Response: The department agrees with the comment. The department does not have data to support the listing of Brush Creek. Brush Creek is not included in the Proposed List.

Comment: Suggested the list should include all nutrient sources for Little Sugar Creek in McDonald County.

Response: Ms. Shannon stated the department agrees with this comment and changed the listing to “multiple point and nonpoint sources.”

Comment: Asked what pollutants were listed for Marmaton and Little Osage Rivers.

Response: EPA added these waters to the 1998 list. EPA did not stipulate a pollutant. Ms. Shannon recommended no change in response to this comment.

Comment: Requested that the department keep Cameron Reservoirs on the list.

Response: The department lists or delists waters based on available water quality data. The data supports removing Cameron Reservoirs from the list. Ms. Shannon recommended no change in response to this comment.

Commissioner Perry asked if these are cases where there was the atrazine problem.

Ms. Shannon replied that is correct.

Commissioner Perry asked if this is related to the Corn Growers study.

Ms. Shannon replied not specifically related to the current study but it does reflect the involvement of the Corn Growers, University Extension, DNR, Department of Agriculture, and others in trying to address on a watershed level the pollutant of concern.

Comments: Concern was expressed about the use of “old” data.

Responses: The 2002 Methodology Document describes the department’s response to data age. The data is considered valid unless current conditions have changed significantly. Data collected prior to the initiation of a significant event that may have an effect on water quality is not assumed to represent current conditions and therefore would not be used in making the current assessment. Ms. Shannon recommended no change in response to this comment.

Commissioner Perry stated there was also a comment made that is not included in the list of comments that 81% of the data used is greater than five years old. She asked if this is a correct statement.

Mr. Ford noted he would have to check.

Commissioner Perry stated this comment was made several months ago. She asked if no one has checked this out.

Mr. Ford stated he does not recall that comment.

Comment: Remove Flat Creek from the list.

Response: The department has no data nor did the commenter provide data to support delisting of this stream. The department recommends no change in response to this comment.

Chairman Herrmann asked which Flat Creek.

Mr. Ford replied the one that the Eureka wastewater plant discharges to.

Chairman Herrmann noted there are two Flat Creeks listed.

Comment: Ms. Shannon reported only one comment was received specifically addressing the categories and priorities that were added to the second public notice. That comment requested that Dry Auglaize Creek be changed to category 1b or 2, and the commenter provided evidence to support changing the listing.

Response: Ms. Shannon stated the department agreed with this comment and made changes to the listing based on the comment.

Commissioner Perry asked if this dropped down to a category 2H.

Ms. Shannon replied Dry Auglaize Creek should be a category 2H.

Chairman Herrmann asked what data is available to substantiate Flat Creek being category 4.

Mr. Ford replied they plan to move their discharge in the next several years off of Flat Creek onto the Meramec River.

Commissioner Hegi asked if that will affect the Meramec River.

Mr. Ford responded they will have to meet water quality standards for the Meramec River.

Commissioner Minton asked what information was provided that took the Dry Auglaize Creek from the 1H category to a category 2.

Mr. Ford replied he believes there were some slightly lowered DO levels in the stream so BOD was listed as a cause. The data that is available is biological data and DO levels that were seen at the plant that actually put it below 5 were actually in the range of 4.7 or 4.8. That level really doesn't cause the kind of impairment to aquatic life that we saw in the stream so staff believes there are other factors that aren't known at this time that are really the main causative factor. For that reason, staff believed the overwhelming pollutant should be listed as unknown, which puts it in the second category.

Commissioner Perry asked that the list be corrected so that Vandalia Lake is not in Pike County. She continued that this is just one item that indicates that this list needs to be proofed more carefully.

Commissioner Greene noted she disagrees that several errors mean staff has not given this list appropriate attention. Rather it means that humans developed the list and there are some mistakes. Review is done by the public and the commission to help correct those things. Commissioner Greene stated she does not believe it is due to a lack of interest or a lack of level of work.

Ms. Shannon recommend that the Clean Water Commission approve the proposed 2002 303(d) List with any changes it considers appropriate.

Chairman Herrmann read from the settlement agreement from 2000 in which MDNR agreed to monitor 26 waters to obtain reliable data concerning the water quality in the waters identified in exhibit B. He noted there are a number of waters in the exhibit which are not included in the list. He asked what progress has been made on these.

Ms. Shannon replied only one of the 26 waters has been added to the 303(d) List. The department has conducted some additional monitoring and is working with EPA to evaluate whether that's an acceptable level of monitoring. There is no data at this time to support adding the other 25 waters to the list.

Chairman Herrmann asked which water has been added.

Mr. Ford responded Bear Creek in Kirksville has been added.

Responding to Commissioner Perry's question, Mr. Ford stated classified waters have their own unique waterbody number. For the few unclassified waters on the list, a holding place number of 9000 is given to indicate they are unclassified.

Commissioner Perry asked if there is a way this process could have begun earlier so that the commission would not be inundated with information at the last minute.

Ms. Shannon noted she provided a chronology of changes that have happened on the 303(d) listing requirements and the schedule staff faced. The challenge staff has been up against is that they started at the beginning of 2001 to formally put the list together and do the methodology document. A change in requirements and deadline came from EPA suddenly and this had to be responded to and a determination made whether or not to use the new guidance.

Commissioner Perry asked if that is what caused the delay.

Ms. Shannon replied that was the primary cause. She noted it did not help that she was new to the process and could not move it forward as fast as she should have.

Mr. Hull noted that staff has put a lot of hours into this process and he sincerely appreciates their efforts. He apologized for any errors that were made during the time staff was under a great deal of pressure. Mr. Hull noted whatever decision the commission makes the staff will move forward with whatever work that involves.

Chairman Herrmann stated he recognizes the public comment period has expired but as a courtesy the commission will hear from several people who have requested to comment.

Commissioner Greene asked how the commission can allow two individuals to comment on the 303(d) List when public comment has closed and not allow others to speak also.

Chairman Herrmann said it was his prerogative. He requested legal advice from commission counsel.

Ms. Neff responded from a legal standpoint public comment has closed and everyone should be treated the same in order to have equal due process of law. Either no one should be allowed to comment or everyone that wants to comment should be allowed to speak since the public was told that public comment ended on August 2. To allow people to speak after that date goes against what was public noticed to the public at large. Ms. Neff advised that no more public comment be taken.

Chairman Herrmann acknowledged that no further public comment will be accepted.

Commissioner Perry stated she attended the Missouri Environmental Conference last week and one of the speakers was deputy assistant administrator at the USEPA. He spoke of the emphasis on partnerships and watershed overall management, people working together to solve problems. Commissioner Perry stated a lot of time has been spent discussing a list and she is concerned about working toward a list when in fact we should be thinking about a document by EPA titled "Final Report 2002 A Review of Statewide Watershed Management Approaches." Commissioner Perry stated watershed management is when people get together to figure out the problem, measure the problem and solve the problem which is proactive instead of getting involved in a lot of lawsuits over a list. She continued she discussed Wisconsin's watershed coordinator last year where the different departments get together and leverage their funding to solve problems. Commissioner Perry stated an example of this in Missouri is a 319 grant given to the Corn Growers who leveraged their one million dollars from the commission and got a total of five million dollars. Their Watershed Research Assessment and Stewardship Project is studying and monitoring projects that were mentioned today as those items that could be delisted because they are solving the atrazine problem. There is not a need for regulations that go statewide that don't work because different watersheds are different. Commissioner Perry encouraged the department and everyone to work together to develop a watershed plan and to work together to solve the problem. She continued that EPA recommended that we do have watershed plans and says most managers were positive about the state's experience and identified a number of benefits resulting from the approach: an increase in the quality and quantity of monitoring data. Commissioner Perry said there seems to be a problem getting good data but this way everyone works together to develop the data and are less likely to fight about it. Better-

focused water quality assessments and planning, more efficient and equitable permitting programs, improved coordination and integration of state water functions and goals and greater public involvement. Commissioner Perry stated the EPA is definitely heading this way and we should be aware of it. This is a chance to start concentrating on being proactive and stop fighting about a list that had some problems in 1998 and still has problems in 2002 and realize sometimes that we need to stop beating a dead horse and heading in a more positive direction.

Commissioner Perry encouraged the department to report to the commission on what can be done in terms of watershed management and coordination so that the focus will be on water pollution problems rather than regulatory requirements.

Commissioner Greene agreed that watershed management is the way to go. There has been a lot of success in southwest Missouri looking at the James River Basin and portions of the White River Basin because we look at the watershed approach. Commissioner Greene stated this does not get the commission past its legal requirement to submit a list. She stated the list has not been rushed in order to have it approved prior to August 28 after which a rulemaking will have to be done. Commissioner Greene stated she does not want to rush into a rulemaking since EPA is developing a new one. She acknowledged there are problems with the list but there is a legal obligation to provide a list or a portion of the list now.

Chairman Herrmann stated this process was begun late in 2000. He noted it has been a moving target every time the commission has seen it and they have never had anything to focus on. Chairman Herrmann asked if the list has to be public noticed again if the commission makes substantial changes to the list.

Ms. Neff responded this would depend on what changes were made. Since the list is public noticed for the purpose of adding or deleting everyone knows that possibility exists. Ms. Neff said as long as it's something that someone could have reasonably anticipated by the public notice that was provided, no further public notice would need to be provided. If it is something that someone who was reading the public notice would never have contemplated, it would probably have to be renoticed.

Commissioner Minton asked if submitting a list with only categories 1 and 3 would constitute such a radical change as to require another public notice. He continued that one of his major concerns is that EPA will not accept our methodology.

Commissioner Perry asked if he is talking about dropping something from the 303(d) List that would still remain on the 305(b) Report, which means that attention will still be focused on it but there won't be TMDLs.

Commissioner Minton replied EPA would not have access to those streams to put them into one individual category.

Ms. Neff stated since the list was public noticed with part 1 being the recommendation for the TMDLs and part 3 being streams that already have TMDLs but need additional work, her

reaction is that not including the other two categories is not such a radical change because the whole idea of the list is to get to TMDLs. These would be the impaired waterbodies where there should be or continue to be TMDLs.

Commissioner Perry asked about limiting category 1 to 1Hs only.

Ms. Neff responded it seems like deleting waters from the list was always a possibility when the list was public noticed.

Commissioner Perry asked about the commission focusing on those things that can be solved and those that are the highest priority to human health thereby making the list small enough so that some change can actually be affected.

Ms. Neff indicated she believes this would not have to be renoticed because it has always been a possibility throughout the public notice that the commission could approve some or all of the waters. It would be a much more substantial change to add something that had never been public noticed.

Commissioner Perry stated she is concerned that some of the waterways on the 1H list, the wastewater treatment plants that are causing the problems, would have very highest priority on the State Revolving Fund list. She asked if they do, and if this list is not published with those 1H wastewater treatment plants, how will that affect their ability to get funding to fix those problems.

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, stated he is not familiar with which communities those particular streams are receiving wastewaters from.

Commissioner Perry stated various wastewater treatment plants are listed as the source and she wondered if they have high priority. She noted her concern is if they don't remain on the 303(d) List that is submitted to EPA, they will lose some status in being able to get money through the State Revolving Fund.

Mr. Townley responded this should not affect the priority point criteria in the regulation and it should not impact their ability to proceed the programs once they make application.

Chairman Herrmann stated priority points are predicated on the affect on the receiving stream.

Mr. Ford replied this is based upon the impairment information in the 305(b) report which would include all waters that are impaired.

Commissioner Greene asked what would be entailed if the commission would decide to delete all category 2s.

Ms. Shannon responded they would remain on the list with a D by them.

Commissioner Greene asked if a reason is needed for the deletion.

Ms. Shannon stated a reason would be needed but that could be simply that this was the decision of the commission. She continued that she understands EPA's new guidance to contain categories. The category that is the equivalent of our category 1 is the category that they consider the 303(d) List.

Commissioner Perry stated there was no number of rivers, or segments or miles that needs to be on the list; that's up to the state.

Ms. Shannon stated it varies tremendously from state to state.

In response to Chairman Herrmann's question, Ms. Shannon replied the current rule requires submittal of the list again in April 2004. EPA's proposed changes to the federal rule indicate the list will be due every four years, which would make the due date 2006.

Commissioner Minton asked if it is appropriate to ask members of the audience what their reaction would be if the commission submitted the list to EPA including only categories 1 and 3 realizing the rest of the streams will remain on the 305(b) list.

Ms. Neff responded she believes the commission can ask any questions they want in order to make a decision.

Commissioner Minton asked for brief reactions to this possible action from Robert Brundage, Leslie Holloway, Ken Midkiff and possibly others if they have a position. He asked if they could support submitting the list to EPA including categories 1 and 3 with or without reservations or if they are totally opposed to this action.

Robert Brundage, Mo-Ag Industries Council, responded since EPA does have guidance that only requires a TMDL for only category 1, it would be difficult to argue with. They may have some concern regarding the reasons for taking them off the list. The reason could be that the commission's guidance basically allows it.

Commissioner Minton asked how he would react to this as a representative of industry.

Mr. Brundage stated Mo-Ag would be pleased if the category 2s were left off because they believe it more appropriate to develop a more defined process on habitat loss. When there is more science involved, there can't be too much argument.

Leslie Holloway, Missouri Farm Bureau, stated habitat loss was one of their major issues and this would address it. She stated another major concern regarding category 1 waters is that some of those waterbodies are identified with the pollutant as nutrients and the source as

livestock production. The waterbodies would also be listed for mercury from atmospheric deposition on that list which is also a concern. Ms. Holloway stated category 3 doesn't appear to contain anything Farm Bureau identified as a concern.

Ken Midkiff, Sierra Club, stated the categories and the priorities aren't necessarily the same and there is some confusion over this.

Commissioner Perry asked if all the 1H waters appear to be legitimate concerns.

Mr. Midkiff responded the 1Hs do make sense but they do not believe there is a provision in the Clean Water Act for categories, only for priorities.

Commissioner Minton noted he was trying to extrapolate levels 1-4 and somehow correlate that to reference how categories 1-4 were derived but they are not necessarily working in conjunction with each other such as level 2 does not represent category 2.

Ms. Shannon responded that is correct. She asked if he is talking about level of quality of the data.

Commissioner Minton said he got crossways with that.

Commissioner Perry asked if there is anyone in the room opposed to the commission approving anything on the category 1H list.

John Carter, The Doe Run Company, stated the stretch of the Mississippi River below the Herculaneum Smelter is classified as category 1H. He continued that the data included on their TMDL information sheet does not support the conclusion that this portion of the Mississippi River is impaired for human health or aquatic uses. Mr. Carter stated there is no quantification of the lead levels in the fish or the zinc levels in the sediment that says there could be harm to human health or impaired water quality uses and they are opposed to this listing.

Commissioner Perry asked if this comment was made before the close of the comment period.

Mr. Carter replied this was submitted as a written comment.

Commissioner Perry asked how the department responded.

Mr. Carter said staff stated they received only one comment on the categories and that was on a water other than the Mississippi. He noted this comment was e-mailed to staff at 4:54 on August 2.

Mr. Ford stated he received several comments from Doe Run in the last week or so and did not remember if that particular comment had been responded to.

Mr. Carter stated virtually every one of Doe Run's facilities are on a stream that's on the list so multiple comments were submitted. This particular one was submitted by Doe Run's general counsel on August 2.

Commissioner Perry asked if it is Doe Run's belief it does not cause a problem to human health.

Mr. Carter responded that along with the data not being quantified to show that what is there is enough to cause a problem to human health or impair aquatic uses, they have some old, level 1 data and is also on sediment rather than water quality data. EPA in its guidance document says numeric criteria must be used to translate the general criteria. In several court cases the courts have ruled that agencies must have numeric criteria to translate their general criteria.

Commissioner Greene stated she believes this is getting into public comment.

Since the comments were received during the comment period, Commissioner Minton asked if this is the only one that he has issue to under 1H.

Mr. Carter acknowledged it is.

Commissioner Perry asked for the department's response to this.

Mr. Ford responded that the observed levels of zinc in certain locations of this section of the river are more than twice as high as values represented in the technical literature that have been shown to be toxic to aquatic life. Staff feels this does represent conditions harmful to aquatic life and would make this a medium priority stream since it's not directly a human health issue. Mr. Ford explained since the source is the Herculaneum Smelter, which is a point source, that makes it a highly treatable source and raises it from a medium to a high priority.

Commissioner Kelly noted it seems the commission is taking the list apart piece by piece and she would like to have some very good reasons for doing it.

Commissioner Perry stated she is looking for something that people can agree upon and can be submitted since there are problems with categories 2 and 4.

Kevin Perry, REGFORM, stated they would support submitting a list with only categories 1 and 3 as this would solve many of the difficulties that have been raised before. He noted they would further support submittal of only 1Hs which would address the remaining concerns namely the difficulty with air deposition of mercury.

Chairman Herrmann asked for explanation of abandoned mine lands classifications.

Mr. Ford responded 3H would be a high priority for a TMDL.

Chairman Herrmann stated actual impairments related to human health are ranked high. He asked why it is an H if the TMDL is already completed.

Mr. Ford stated it probably just hadn't been removed as it should have been.

Commissioner Minton asked if the TMDLs could be dated as they are developed.

Richard Tuttle, City of Fulton, objected to Stinson Creek being on the list. The department is proposing to add VSS to the list of impairments yet they have no data to support that. Mr. Tuttle continued he draws different conclusions from the data that was presented for the BOD than staff does as the DO in the stream actually increases below the plant effluent and is actually within the 5 mg/l requirement whereas above the plant it is below that limit.

Commissioner Perry asked if the city's plant is not the source of the BOD.

Mr. Tuttle stated the plant is the source of the BOD but it does not appear to be impairing the stream according to the data staff presented. The impairment would be the DO level dropping below 5 mg/l and this does not occur below the plant effluent in any of the data except for one instance when it was below 5 mg/l above the plant as well.

Commissioner Perry asked if this comment has been made during the comment period.

Mr. Tuttle replied it has been made and he was not sure whether the commission had seen the letter.

Mr. Ford replied all comments received are in his office. He continued that most of the data collected at Stinson Creek shows that DO levels are good. Some data indicates that DO levels above and below the plant are below the standards and when that occurred, the levels downstream of the plant were below those upstream of the plant. The Water Quality Standards specifically say that if the DO is less than 5 mg/l and it is lower than the observed DO levels upstream of the discharge, that exceeds the standards. The total volume of data is not great but the observed exceedances of the DO standards from the small data set shows that exceedances are greater than 10% and so the guidelines from EPA on listing impairment require this to be listed as an impairment.

Commissioner Perry asked if this should be highest priority rather than a medium priority.

Mr. Ford responded this is a high priority because it is a point source, which is highly treatable.

Responding to Chairman Herrmann's question, Mr. Ford noted the change was that Stinson Creek was listed for ammonia in 1998 and the more recent data showed that ammonia is no longer a problem. Mr. Ford noted the status column of the list should contain a C for Stinson Creek.

Commissioner Greene asked for the departmental response regarding deletion of categories 2 and 4 from the list.

Ms. Shannon responded during her review of the comments on the 303(d) List, significant public concern was raised about Dardenne Creek. Approximately 100 comments were received regarding Dardenne Creek, which would be removed from the list if this action were taken.

Commissioner Perry stated habitat loss could still be concentrated on whether or not Dardenne Creek is on the 303(d) List.

Ms. Shannon acknowledged that and continued that prioritization for funding was raised earlier. There are several areas where the 303(d) List is used for that prioritization. Ms. Shannon noted the ones she is familiar with refer to the 1998 303(d) List. The 305(b) Report is the information that is taken into consideration for the priority points for the State Revolving Fund. The 319 grants specifically reflect the 303(d) List and EPA's most recent guidance, which is changing, on the use of 319 money has indicated that some of that money in the past has been available for use only for waters that are on the 303(d) List.

Commissioner Perry noted if these are the ones with the highest priority, those are the ones the commission would want to focus on.

Ms. Shannon noted it would be challenging depending on how many of those are nonpoint source contributed waters and EPA's guidance stays the same.

Mr. Hull noted he tries to find common ground between various entities that have concerns about issues to try to reach a solution. He supported submittal of the list and the biggest concerns will be addressed if the commission moves forward with submitting the list as they have been discussing. Submitting the list in this manner will show that we are concentrating on the highest priority problems.

Commissioner Greene reported she counted 69 category 2s and 4s that would be deleted if the commission goes forward with the submittal in this manner, which she noted is a substantial number. She continued there is a concern that this would be a red flag to EPA. Deleting medium and low category 1s is another 107 waters, which is a major red flag to EPA. Commissioner Greene stated she is against deleting the medium and low category 1s because they need some work done.

Commissioner Kelly stated she does not see how the commission can justify cutting any of the category 1s from the list. She continued the commission wants as much unanimity among the concerned parties as possible but the commission is charged with protecting these streams and sending that short a list to EPA does not appear that the commission is doing its job.

Commissioner Perry stated EPA had originally intended to have a combined list of 305(b) and 303(d) waters. The commission isn't saying that these waters aren't impaired and don't have a problem, but rather that the commission wants a much shorter 303(d) List so there is a smaller amount of waters that can be handled because they have top priority. The TMDLs will get completed and problems will be solved.

Commissioner Greene asked if the commission isn't required to list impaired waters.

Commissioner Perry replied that is what the 305(b) Report is about.

Mr. Ford replied the intent of the 303(d) List is that all waters that meet the criteria for 303(d) be listed.

Commissioner Hegi stated he can only imagine what it is like for EPA to try to set guidance for the entire United States. He continued the problems will never be solved until we begin working on a watershed basis.

Commissioner Perry stated this is the main reason she is in favor of shortening the list. She continued that she does not want to give anyone the impression that the other waters are not impaired but there is disagreement on whether or not a TMDL should be done on some of these. Commissioner Perry suggested doing what can be agreed upon and solve those problems and then move on and solve more problems. She noted there are legitimate complaints for which there don't appear to be answers such as habitat loss, mercury and others on the lower levels.

Commissioner Kelly stated these are good intentions but she wondered if this wouldn't be perceived by the public as pulling back from the commitment to these streams.

Commissioner Perry replied not if it is reported accurately. She is proposing to shorten the list to help solve the problem and help the environment. The time being spent fighting over the longer list should be spent monitoring the shorter list and solving problems.

Gerry Boehm, Greenway Network, stated he understands where the commission wants to go with the list and is sympathetic to the cause and he believes they are headed in the right direction. He continued that if Dardenne Creek is not on the list, people in St. Charles will be irate. Mr. Boehm stated the TMDL is looked upon by many people as a way of being proactive with the problem that they might have. The only way to get recognition for having a stream that is somewhat impaired is to be on the list. Mr. Boehm noted a watershed process is the way to go but how to get there is the question.

Commissioner Perry noted if emphasis is switched to a watershed approach, the people could be involved in the watershed and they are doing something other than working toward a list.

Mr. Boehm noted there are two watershed alliances in St. Charles now that is moving in the right direction. To be able to go forward with that, they need funds.

Commissioner Perry noted funds wouldn't be affected by this action.

Scott Totten, Director of the Division of Water Protection and Soil Conservation, stated the list that staff prepared and the categories are directly from the federal register that exists today for development of a water quality planning and management process. He continued that subpart c of 130.27 Identifying Impaired Waterbodies and Establishing Total Maximum Daily Loads refers to parts rather than categories but the numbering system and the definition are the same. Mr. Totten explained that category 1s are the ones that require a TMDL be conducted and category 3 are those for which a TMDL has been prepared but not yet implemented. Part 4 are waterbodies that are impaired but the state believes they can be dealt with before the next listing process. Category 2 are waterbodies impaired by pollution but not impaired by one or more pollutants and a TMDL is not required for waterbodies on part 2. Mr. Totten stated the commission is discussing whether only those that require a TMDL should be left on the list and those that are not should be deleted. He noted he understands the concern with the action that EPA took on the 1998 list but staff followed EPA's rule the last time. It has never been brought up that EPA did not follow its own regulation.

Commissioner Minton noted this is why he asked the question and had individuals address it. He stated if he had his way, the whole process would be done differently. Commissioner Minton stated the commission is again in the situation of submitting another list to EPA and wondering if they will do the right thing since they failed with the 1998 list. They are in the middle of a methodology change and did not send a representative to the meeting today to answer questions. Commissioner Minton noted he is trying to develop a list that protects the public's interest and the resources and not come up with a convoluted list like in 1998.

Mr. Totten responded the department is trying to follow EPA's regulations and present to the commission a list based on the best analysis of the available data on what needs to be on this list and how it needs to be categorized and how the priorities come out. The regulations don't prescribe removing things from the list just because a TMDL is not going to be required but this was not tried the last time.

Chairman Herrmann stated there are 148 category 1s, 56 of which were added in 2002. TMDLs are required for category 1 streams. Two are listed as already having TMDLs, 12 are listed as TMDL established and approved by the EPA, leaving 134 TMDLs to be completed.

Mr. Totten stated one of the first things done in many of these processes is to get additional data because you are talking about impairment at a point and you are doing a watershed analysis to allocate the load to the watershed. You are looking at other sources in that watershed besides the obvious in some cases.

Chairman Herrmann noted there are 17 for which no category is listed.

Mr. Totten responded those are the ones that have a TMDL completed, improvement implemented or there is disagreement over data analysis and they are recommended for deletion.

Chairman Herrmann asked if that doesn't fall into category 3 or 4.

Mr. Ford responded staff is saying they should not be on the list at all.

Chairman Herrmann asked if they would still be on the 305(b) Report if they were deleted from the 303(d) List if they are thought to be impaired.

Commissioner Perry asked that the commission break for lunch to allow the individual commissioners the opportunity to examine the list more carefully.

The commission adjourned to lunch at approximately 12:30 p.m. and the meeting was reconvened at approximately 1:30 p.m.

Commissioner Greene stated even though a TMDL cannot be defined for category 2s it is important to keep the entire list because this is an impetus for action with communities and potential funding.

Commissioner Greene moved to **accept the 303(d) List as submitted by staff**; seconded by Commissioner Kelly and failed with the following vote:

Commissioner Hegi: No	Commissioner Kelly: Yes
Commissioner Minton: No	Commissioner Perry: No
Commissioner Greene: Yes	Chairman Herrmann: No

Commissioner Minton moved to **submit to EPA the 303(d) List comprised of categories 1 and 3**; seconded by Commissioner Perry and passed unanimously.

Commissioner Perry moved that the **Department of Natural Resources study and report to the commission, beginning with the September meeting, on the development of a watershed approach for the State of Missouri to evaluate and to solve the water pollution problems of the state**; seconded by Commissioner Minton and unanimously passed.

Commissioner Greene asked if providing information at the next meeting is too soon.

Commissioner Perry stated she wants to have an update each month on progress so she knows that something is being done toward a watershed approach and how to get there.

Motion passed unanimously upon roll call vote.

Commissioner Minton asked if promulgating the next 303(d) List as a rule would include the methodology.

Ms. Shannon stated it does not.

Commissioner Minton moved that the **Department of Natural Resources proceed with promulgating a rule for development of the 303(d) List and methodology in a reasonable and prudent fashion**; seconded by Commissioner Hegi.

Commissioner Minton stated he made the motion because he sees no reason to jump in front of EPA promulgating its rule but, at the same time, there is no reason for staff to wait until the last minute before the next list has to be submitted to EPA.

Mr. Hull noted he doesn't believe there will be a problem with this but EPA's guidance is not yet final. He asked if they also had a proposed rule regarding watersheds.

Ms. Shannon responded EPA had previously proposed a TMDL rule that has not yet been finalized. EPA anticipates proposing a revision to that rule which is now being called a watershed rule. Ms. Shannon explained the most recent information from EPA describes the rule as including discussions on how the 303(d) List is developed and the methodologies associated with it. Staff has no indication when this rule will be finalized so that might pose a challenge.

Commissioner Minton replied he does not expect staff to spend time to start the process for developing a rule for methodology when it may be a year and a half from now when EPA provides guidance on how best to go about the process. He stated, between now and the next list, he believes a methodology needs to be in place that the general public has had to opportunity to comment on and the rule for the 303(d) List will have to be in place due to legislative action.

Commissioner Perry noted while she agrees with the intent that the public should be able to comment on the methodology, her concern is that this motion may be premature because the commission has no idea whether any methodology will be required because there is no idea what the rule will be.

Commissioner Minton responded the list has to be developed and how the list is developed is the methodology.

Commissioner Perry stated the commission doesn't necessarily know that. She noted concern that there may be some point where EPA says that the TMDL developmental strategy isn't working as well for them.

Commissioner Minton stated he believes there will be a continuation of the 303(d) List in some form and staff needs to be aware that the present methodology is unacceptable. The process of getting the streams on the list needs to go under the same scrutiny as the list itself. Commissioner Minton noted making this motion today gives plenty of warning that this is a consideration to be made before the next list is completed so as not to run into a problem with time.

Motion passed upon roll call vote with Commissioner Greene voting against.

Environmental Management Systems Presentation

Jim Penfold, Director of the Environmental Assistance Program, provided an informational presentation regarding the characteristics and benefits of environmental management systems (EMS) and what the Department of Natural Resources is proposing with respect to the promotion of these systems in Missouri.

Mr. Penfold concluded his presentation by asking the commission who they would recommend for an external advisory group for this process. He explained this would be a group that is external to the EMS process, but not necessarily external to the department.

Chairman Herrmann thought possibly the universities would have staff who had knowledge in the different areas of concern.

Commissioner Minton said one of the best ways to find the weaknesses of a system is to work with people such as retired CEOs who have been there and recognize the shortcomings but no longer have anything at risk by trying to make an industry better.

Final Staff Recommendation on Rose Acre Farms Variance Request

Randy Clarkson, Chief of the Water Pollution Control Program Engineering Section, reported the commission voted preliminary approval of this request at its June meeting and asked the department to place that action on public notice. No comments were received during the public notice of this variance request and Mr. Clarkson recommended final approval of the variance request.

Commissioner Hegi moved **to grant final approval to the Rose Acre Farms Variance Request**; seconded by Commissioner Kelly and unanimously passed.

Consolidated North County Levee District Variance Request

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported a variance application was filed by the Consolidated North County Levee District in St. Charles for a variance from 10 CSR 20-4.061(10) which requires that each contract be awarded after formal advertising, and that contract award be made to the lowest responsive and responsible bidder. The rule also requires that departmental approval be obtained prior to award of those contracts.

Recognizing the ongoing efforts in St. Charles County, the St. Charles County storm water coordinating committee recommended that funds available to the county be assigned to the Consolidated North County Levee District for the construction of a levee in the St. Charles

County area under the direction of the Corps of Engineers through a project cooperation agreement. The Corps wanted to utilize a Small Business Administration program tailored toward utilizing small and disadvantaged enterprises in the performance of those contracts.

Mr. Townley reported there is a defined process in the regulations that the Corps must utilize in performance of these contracting procedures and the Department of Natural Resources also has certain expectations as evidenced in the Governor's Executive Order # 98-21, which encourages participation in disadvantaged business enterprises and is further evidenced in grant agreements and conditions.

Staff reviewed the Small Business Administration program and it is structured to find and enhance the ability of small and disadvantaged businesses to access government contracts. It does not fit the letter of the commission's regulation although staff believes it meets the intent of the regulation. Mr. Townley noted, as time goes forward, staff learns about activities and programs that they were not aware of when the regulations were written.

Mr. Townley recommended preliminary approval of the variance request so it can be public noticed.

Kevin Wibbenmeyer, General Counsel for the Consolidated North County Levee District, voiced his support for the variance request and introduced Mike Farley, Chairman of the North County Levee District; Gary Elmstead, Administrative Liaison; Wayne Miller, Corps project manager; Glenn Chapman and Brenda Wingeorge, of the 8A Corps minority program. Mr. Wibbenmeyer asked for approval of the improvement of the L-15 project which is an improvement of an agricultural levee in St. Charles County.

Commissioner Greene moved to **grant preliminary approval to the Consolidated North County Levee District variance request**; seconded by Commissioner Minton and unanimously approved.

Election of Clean Water Commission Officers

Deborah Neff, Commission Counsel, explained that Section 644.021 of the Missouri Clean Water Law provides that each year the commission will elect a Chairman and Vice Chairman. Ms. Neff requested nominations for the Chairman.

Commissioner Perry nominated **Tom Herrmann to continue as Chairman**; seconded by Commissioner Hegi and elected by acclamation.

Commissioner Hegi nominated **Davis Minton to continue as Vice Chairman**; seconded by Commissioner Perry and elected by acclamation.

Permitting Update

Mr. Schroeder reported staff is continuously improving the way that permits are being issued. There is an upward trend which shows staff is above 100 permits biweekly. This also indicates that staff is above the pace of the number of applications coming in.

The permit action management system tracks the dates of certain major actions being taken. Staff continues to be challenged by the database and still cannot provide accurate reports on how long it's taking to get each individual type of permit completed.

Mr. Schroeder provided examples of specific permit reviews.

The first example is where an application is received more than 180 days before permit expiration, the staff will delay a posting of a draft permit for reissuance until the expiration date is within 60 days of expiration. The purpose for the delay is to prevent permit reissuance prior to its expiration date. Mr. Schroeder noted he is exploring the possibility of being able to proceed through a permit review and issue a permit a few months in advance of an expiration date.

Commissioner Minton asked if the application fee had to be returned to the applicant.

Mr. Schroeder replied this was a renewal application so there is no fee involved.

Commissioner Perry asked if staff is only holding renewals.

Mr. Schroeder acknowledged this only affects renewal applications because there is an expiration date.

The second example is where a construction permit was issued, construction took place and after construction was completed, the applicant applied for the operating permit to begin discharging but at the same time asked for modifications to the operating permit. The draft operating permit has to be public noticed before the construction permit is issued. In a case such as this, where an applicant asks for a modification to a previously public noticed permit, staff can reset the statutory time lines and meet those.

Commissioner Greene asked if there is currently no way to restart the clock in the database.

Mr. Schroeder replied this is correct and staff is trying to establish a clock in the system where every time a certain step is taken and a date is added to a field, it automatically resets the clock.

The third example was that staff failed to consider all the necessary provisions in a permit when it was put on public notice. Another public notice had to be completed to make corrections. If another public notice is required for any permit it almost automatically means that it will exceed the 180-day timeline. The statute does not give staff much leeway if a mistake is made in an earlier public notice and staff finds the mistake themselves.

Mr. Schroeder stated staff will try to simplify the data entry procedures and criteria and try to set up the clock.

Commissioner Perry asked if that was related to why the technical review took 239 days.

Mr. Schroeder said there may be a lot of dialogue between the applicant and staff in this particular case and, every time there is a resubmittal from the applicant, it resets the clock. The review might have taken this long but it might not have exceeded the statutory timeline.

Commissioner Minton asked if staff does not have a mechanism by which they can keep moving their start up date.

Mr. Schroeder replied the management system is set up so staff can chronologically put in a date every time a major step is taken. Staff can devise a new field for specific and unusual steps that have to be taken. The problem is how the various fields are being used is not consistent. The chronology of events is lost sometimes while at other times there is a step that is not represented in the data set.

Commissioner Minton asked how staff will address the problem.

Mr. Schroeder responded they are simplifying the number of fields that have to be entered and will set aside a field on that screen where staff enters a date any time certain actions are taken that are known to reset the clock.

Four steps involved are a Completeness Check, Technical Review, Public Comment and Response, and Final Permit Action. Staff will be educated that each of the steps has to be chronologically connected which will give a true indication of the time it takes from day 1 to the day the final action is taken. The ability for staff to tell the system when to reset the clock is being added into the system.

Responding to Commissioner Hegi's question, Mr. Schroeder noted staff is looking at streamlining some permits such as land disturbance. In cases of domestic permits, staff has to review the discharge monitoring reports over the past five years to determine if there are any compliance issues along with a number of other steps. Mr. Schroeder noted staff has been trying to streamline permit reviews for the last several years. General permits are the first step in doing this and this may branch out to domestic permits in the future.

Mr. Hull stated there might be a need to look at the original limits that were permitted to see if the limits need to be changed because of changing conditions.

Mr. Schroeder agreed and continued that even if an entity is in compliance with the permit, that does not necessarily mean the stream is being protected. In many cases, a water quality review of the stream itself has to be completed to determine what its condition is.

Mr. Schroeder explained that backlog is the number of permits that have expired and may or may not be permits that have applications that have not been renewed or terminated if they

are no longer needed. The numbers have continually dropped and the backlog should be eliminated within the next fiscal year.

Staff Update on Holcim, Inc. 401 Water Quality Certification

Ms. Shannon reported the 401 water quality certification issued by the Department of Natural Resources was appealed and the certification was withdrawn by the commission at the March 2002 meeting. Staff was then directed to hold a public hearing. A new application for certification was received from Holcim and a public hearing was held in June with public comments being accepted until July 7. Ms. Shannon explained the department needs to act on an application for 401 certification within 60 days. If the department and applicant both agree, an extension is allowed to this 60 days. Holcim has agreed to an extension to allow staff time to review and consider public comments. The certification is now due August 15, 2002.

Commissioner Perry asked what happens next week.

Ms. Shannon responded unless another extension is agreed to by the parties, the department has to issue or deny the certification or it will be waived.

Commissioner Minton asked if staff anticipates asking for another extension.

Ms. Shannon replied staff has discussed with Holcim this possibility in order to consider some additional information.

Commissioner Perry asked if staff has asked for additional information.

Ms. Shannon responded Holcim is offering to provide some additional information and she is hopeful they will request an extension.

LEGAL MATTERS

Dismissal of Joplin Manufacturing, Inc. Appeal 350

Joplin Manufacturing, Inc. filed an appeal concerning a transfer of a Missouri State Operating Permit. The department withdrew the permit because a subsidiary that it had been issued to was no longer operating on the site. The original permit was reinstated until such time as it is reissued. Ms. Neff explained this resolved the appeal and the appellant requested that the appeal be withdrawn. Based on the fact that the appellant wanted to withdraw the appeal, the hearing officer recommended dismissal. Ms. Neff requested the commission enter an order dismissing appeal 350.

Commissioner Perry asked if they have any choice.

Ms. Neff noted the statute states that the commission needs to make the final order on all appeals so that is why the orders are done.

Commissioner Hegi moved **to dismiss Joplin Manufacturing, Inc. Appeal 350 as recommended by the hearing officer**; seconded by Commissioner Greene and unanimously passed.

Other

September 5, 2002 Meeting

Mr. Hull reported the morning session of the September 5 meeting of the Clean Water Commission will be a joint meeting with the Soil and Water Districts Commission. The afternoon session will be the regular meeting of the commission.

Commissioner Perry asked that someone thank the Kansas City Chamber of Commerce for the invitation to the reception on September 25.

Meeting on State Revolving Fund

Mr. Townley reported the federal capitalization grants received from EPA has a requirement for the state to make a 20% match. That match for the clean water SRF is provided through the issuance of state water pollution control bonds. A consensus was reached at a meeting held yesterday with the Office of Administration to take advantage of one of the opportunities in the Federal Clean Water Act that allows repayment of state match bonds from revenues of the SRF under certain criteria. Staff is modifying its program with assistance from the Office of Administration to make these opportunities available. The bond proceeds from the issuance of these bonds would be placed in a fund inside the SRF instead of outside. By doing this, the interest earnings on the entire SRF program are available to pay the debt service on state match bonds, saving the state approximately \$500,000 next fiscal year. Staff is meeting with EPA to identify the structure for this. One of the things that is readily apparent is that, since monies are being taken out of the construction fund, staff will be placing those in a reserve for repayment of this debt which will necessitate a modification of the Intended Use Plan (IUP). At the September meeting staff will present a revised IUP to the commission and also make recommendations for bypass at that time.

Chairman Herrmann asked if there would be any more problems with EPA's bookkeeping procedures.

Mr. Townley replied EPA is currently doing its annual review of the SRF. Staff met with them after the meeting with the Office of Administration yesterday and EPA is willing to work with them in an expedited fashion. Director Mahfood has met with EPA's regional director and he has pledged efforts of his staff to make this happen quickly.

Commissioner Perry asked about the transfer of funds that was discussed last year.

Mr. Townley responded the transfer of clean water funds to the drinking water program did not occur. EPA recognized its error in freezing payments and apologized for that action.

Commissioner Greene asked if this current action is a permanent change or if it will be short term.

Mr. Townley responded it is not intended to be permanent but rather to be done one year at a time depending on the budget situation.

There being no further business to come before the commission, Chairman Herrmann adjourned the August 7, 2002 meeting of the Clean Water Commission at approximately 3:10 p.m.

Respectfully submitted,

Jim Hull
Director of Staff